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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,898	07/27/2005	Warren Strober	14014.0410U1	5707
88195 NIH-OTT 1560 Broadway Suite 1200 Denver, CO 80238	7590 07/29/2009		EXAMINER OUSPENSKI, ILIA I	
			ART UNIT 1644	PAPER NUMBER
			MAIL DATE 07/29/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/517,898	STROBER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	ILIA OUSPENSKI	1644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 01 April 2009.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 38-42,45,46,49-52,65,66,69,71,72,75,76,78-81 and 83-85 is/are pending in the application.

4a) Of the above claim(s) 38-42,45,46,49-51,72,75,76,78-81,83 and 84 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 52,65,66,69 and 85 is/are rejected.

7) Claim(s) 71 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 04/24/2009.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## DETAILED ACTION

1. Applicant's amendment and remarks filed on 04/01/2009 are acknowledged.

Claims 1 – 37, 43 – 44, 47 – 48, 53 – 64, 67 – 68, 70, 73 – 74, 77 and 82 have been canceled.

Claim 85 has been added.

Claims 38 – 42, 45 – 46, 49 – 52, 65 – 66, 69, 71 – 72, 75 – 76, 78 – 81 and 83 – 85 are pending.

2. Claims 49 – 51, 72, 75 – 76, 78 – 81 and 83 - 84 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected Inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction requirement in the reply filed on 10/14/2008.

Claims 38 – 42 and 45 – 46, as presently amended, read on nonelected invention, as set forth in the Restriction Requirement of 09/11/2008. Therefore, claims 38 – 42 and 45 – 46 are withdrawn from further consideration by the Examiner under 37 C.F.R. § 1.142(b), there being no allowable generic or linking claim.

**Claims 52, 65 – 66, 69, 71 and 85 are presently under consideration.**

3. Regarding Applicant's IDS filed on 04/24/2009, it is noted that only the two documents listed on the IDS have been considered. Documents submitted as Appendices and not specifically listed on the IDS have not been considered.

4. The objections and rejections of record have been withdrawn in view of Applicant's amendment and arguments, except as reiterated herein.

5. The following is a quotation of the **first paragraph of 35 U.S.C. 112**:

*The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.*

6. Claims 52, 65 – 66, 69 and 85 are rejected under **35 U.S.C. 112, first paragraph**, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Applicant is not in possession of the claimed method, because Applicant is not in possession of the generically recited “substance that binds to IL-13.”

Applicant's arguments have been fully considered but have not been found convincing.

Applicant argues that the skilled artisan would understand that substances, such as an antibody, that binds IL-13 and inhibits the ability of IL-13 to bind IL-13R $\alpha$  would be effective in inhibiting IL-13 activation of IL-13R $\alpha$ .

In response, it is acknowledged that Applicant is in possession of an antibody that binds IL-13 and inhibits the ability of IL-13 to bind IL-13R $\alpha$ . However, the rejection is maintained with respect to the generic recitation of a “substance that binds to IL-13,” essentially for the same reasons as set forth in Section 6 of the previous Office Action of 01/07/2009, which Section is incorporated by reference herein.

**7. Claim 71 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.**

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ILIA OUSPENSKI whose telephone number is (571)272-2920. The examiner can normally be reached on Monday-Friday 9 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram R. Shukla can be reached on 571-272-0735. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ILIA OUSPENSKI/  
ILIA OUSPENSKI, Ph.D.  
Primary Examiner  
Art Unit 1644

July 27, 2009